



Integrity Commissioner's Office

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MEMORANDUM

DATE: May 9, 2013

TO: Mayor Rob Ford
City of Toronto Councillors

FROM: Janet Leiper
Integrity Commissioner

RE: Integrity Commissioner Interpretation Bulletin
**Legal Fees Incurred By Members of Council Not Covered By
The City**

Dear Members of Council,

The question of legal fees incurred by Councillors has arisen from time to time. Please find attached an interpretation bulletin and chart for your assistance.

I wish to acknowledge the invaluable assistance of staff from the City Clerk's office and the office of the City Solicitor in preparing the information in Attachment 1.

Yours truly,

Janet Leiper
Integrity Commissioner

c. Ulli S. Watkiss, City Clerk
Anna Kinastowski, City Solicitor



Integrity Commissioner

Interpretation Bulletin

Legal Fees Incurred by Members of Council not covered by the City

Introduction

Members of Council have asked in the past about how they can pay legal fees which are not subject to the City of Toronto indemnification policy or payable by the City. [See Attachment 1 for legal fees payable by the City]

Members have asked whether it is an improper gift or benefit under the Code of Conduct for Members of Council ("Code of Conduct") if other people contribute to a member's legal fees. This interpretation bulletin is intended to assist members of Council who may have incurred legal fees.

Article IV of the Code of Conduct: Gifts and Benefits

The City of Toronto has a "no gifts or benefits" rule unless the gift falls into one of the specific exceptions in Article IV. The Code of Conduct does not have any exception for a public official to receive funds from a member of the public to help pay for the member's legal fees. A copy of Article IV is attached to this bulletin for ease of reference.

This means that when it comes to defraying legal expenses that are not covered by the City, members of Council may not hold public fundraisers, use the resources of their offices to seek contributions, or receive contributions for this purpose from members of the public, lobbyists, clients of lobbyists, developers, community groups, union leaders, corporations or businesses who are hoping to do business with the city. Members of Council should refrain from speaking about their debts while acting in a public capacity to avoid the impression that they are asking the public at large for a gift or benefit.

Private Contributions

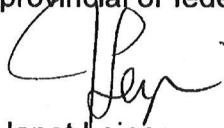
In the case of legal fees that are not covered by the City of Toronto, the Code of Conduct is not intended to apply to private arrangements for contributions. A member of Council in his or her private life may have relatives and friends who are able and willing to help defray the costs of legal proceedings. This is consistent with past advice from the Office of the Integrity Commissioner and continues to be the position of the office.

The question of whether or not a contribution is from a "private" source rather than a public source is a question of fact.

Examples may include a close relative (so long as that relative is not a lobbyist or otherwise excluded) or a long time family friend. Members are advised to err on the side of caution and decline to accept doubtful contributions from persons who might want to do business with the City. Members are also advised to keep careful records of the source, nature of the relationship to the contributor and the sums received to enable them to satisfy, if required, concerns about compliance with the *Code of Conduct*.

Members are encouraged to consult with the Integrity Commissioner for confidential advice on this question.

Finally, this bulletin does not cover all other laws that may apply to members of Council who receive loans, donations or benefits. As set out in the *Code of Conduct*, members are expected to be aware of the provisions of the *Municipal Elections Act* and other provincial or federal statutes that may apply in those circumstances.



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Attachments:

Attachment No. 1 – Members of Council and Legal Fees

Attachment No. 2 – Article IV (Gifts and Benefits) of the *Code of Conduct for Members of Council*

Attachment 1 -- Members of Council and Legal Fees

Role	Issue Example	Funding	Reference/Contact
Member of Council as Member of Council	Legal Fees related to insurance claims, director liability, defamation or human rights tribunal cases	<i>City Expense --</i> City of Toronto Insurance Policy	City of Toronto <i>Insurance & Risk Management Policy Manual</i> http://insideto.toronto.ca/corporate_finance/pdf/irm_manual.pdf Contact: Jeff Madeley, Manager, Insurance and Risk Mgmt, 2-6301
	Legal Fees for FOI requests for Councillor records	<i>City Expense --</i> Council General Expense Budget	CC13.4 , " <i>Appeals of Access Decisions in Relation to Councillor Records and Retention of Outside Counsel</i> " approved by City Council at its meeting on October 21, 2011 http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.CC13.4 Contact: Susan Campbell, Manager, Access and Privacy, 5-7383
	Legal Fees for Integrity Commissioner formal or informal investigations	<i>City Expense --</i> Councillor Constituency Services and Office Budget	EX21.9 " <i>Policy Changes to Facilitate Councillor Office Operations</i> " approved by City Council at its meeting on July 11, 12 and 13, 2012. http://www.toronto.ca/city_council/pdf/offhttp://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.EX21.9ice-budget-policy Contact: Winnie Li, Director, Council and Support Services, 2-8676
	Legal Fees for Criminal or Civil Cases when found not guilty or not liable, or Municipal conflict of interest cases where member succeeds	<i>City Expense --</i> Council General Expense Budget	EX22.8, " <i>Review of Indemnification Policy for Members of Council</i> ", approved by City Council at its meeting on July 15, 16 and 17, 2008. http://insideto.toronto.ca/councillors/pdf/indemnification.pdf Contact: Anna Kinastowski, City Solicitor, 416-392-0080
Member of Council as a candidate	Campaign related issues within campaign period	<i>Campaign Expense</i>	Compliance with all requirements of <i>Municipal Elections Act</i> . Contact: Bonita Pietrangelo, Director, Elections and Registry Services, 416-392-8019
	Legal expenses for compliance audit, recount and controverted election beyond campaign period		Candidates must comply with the requirements of the <i>Municipal Elections Act</i> . Depending on timing of events, they can extend campaign and fundraise during the extended campaign period, they can use surplus from the campaign or the courts could award costs.

Role	Issue Example	Funding	Reference/Contact
			After the campaign period, these are individual costs and no longer candidate costs. Contact: Bonita Pietrangelo, Director, Elections and Registry Services, 416-392-8019
Member of Council as an individual	Conflict of Interest consultations or legal fees related to conflict of interest legal proceedings and appeals if member is not successful	<i>Personal expense</i>	Cannot fundraise. Personal contributions from friends or relatives may be permitted in limited circumstances. Consult with the Integrity Commissioner. Contact: Janet Leiper, Integrity Commissioner, 416-397-7770
	Legal fees related to conflict of interest legal proceedings and appeals if member is successful.	<i>City Indemnification Policy or Personal expense</i>	Councillor may apply for reimbursement under the City's Indemnification Policy if there is finding of no contravention. See section above. Cannot fundraise. Personal contributions from friends or relatives may be permitted under limited circumstances.. Consult with Integrity Commissioner. Contact: Janet Leiper, Integrity Commissioner, 416-397-7770

Attachment No. 2

Code of Conduct for Members of Council

IV. GIFTS AND BENEFITS

No member shall accept a fee, advance, gift or personal benefit that is connected directly or indirectly with the performance of his or her duties of office, unless permitted by the exceptions listed below.

For these purposes, a fee or advance paid to or a gift or benefit provided with the member's knowledge to a member's spouse, child, or parent, or to a member's staff that is connected directly or indirectly to the performance of the member's duties is deemed to be a gift to that member.

The following are recognized as exceptions:

- (a) compensation authorized by law;
- (b) such gifts or benefits that normally accompany the responsibilities of office and are received as an incident of protocol or social obligation;
- (c) a political contribution otherwise reported by law, in the case of members running for office;
- (d) services provided without compensation by persons volunteering their time;
- (e) a suitable memento of a function honouring the member;
- (f) food, lodging, transportation and entertainment provided by provincial, regional and local governments or political subdivisions of them, by the Federal government or by a foreign government within a foreign country, or by a conference, seminar or event organizer where the member is either speaking or attending in an official capacity;
- (g) food and beverages consumed at banquets, receptions or similar events, if:
 - 1. attendance serves a legitimate business purpose;
 - 2. the person extending the invitation or a representative of the organization is in attendance; and
 - 3. the value is reasonable and the invitations infrequent;
- (h) communication to the offices of a member, including subscriptions to newspapers and periodicals; and
- (i) sponsorships and donations for community events organized or run by a member or a third party on behalf of a member, subject to the limitations set out in the Policy on Council Member-Organized Community Events.

Except for category (c) (political contributions allowable by law), these exceptions do not apply where such gifts or benefits are provided by lobbyists or their clients or employers (as defined or described in Municipal Code Chapter 140, Lobbying). For these purposes, a lobbyist is an individual, organization or business that:

- [i] is lobbying or causing the lobbying of any public office holder at the City, a local board (restricted definition) or the board of health;
- [ii] the member knows is intending to lobby, having submitted or intending to submit a registration to the Lobbyist Registrar for approval to communicate on a subject matter; or
- [iii] is maintaining an active lobbyist registration with the City even though not having a current active subject matter registered with the lobbyist registry.

In the case of categories (b), (e), (f), (g), (h) and (i), if the value of the gift or benefit exceeds \$300, or if the total value received from any one source during the course of a calendar year exceeds \$300, the member shall within 30 days of receipt of the gift or reaching the annual limit, file a disclosure statement with the Integrity Commissioner.

The disclosure statement must indicate:

1. the nature of the gift or benefit;
2. its source and date of receipt;
3. the circumstances under which it was given or received;
4. its estimated value;
5. what the recipient intends to do with any gift; and
6. whether any gift will at any point be left with the City.

Any disclosure statement will be a matter of public record.

On receiving a disclosure statement, the Integrity Commissioner shall examine it to ascertain whether the receipt of the gift or benefit might, in her or his opinion, create a conflict between a private interest and the public duty of the member. In the event that the Integrity Commissioner makes that preliminary determination, he or she shall call upon the member to justify receipt of the gift or benefit.

Should the Integrity Commissioner determine that receipt was inappropriate, he or she may direct the member to return the gift, reimburse the donor for the value of any gift or benefit already consumed, or forfeit the gift or remit the value of any gift or benefit already consumed to the City.

Except in the case of categories (a), (c), (f) and (i), a member may not accept a gift or benefit worth in excess of \$500 or gifts and benefits from one source during a calendar year worth in excess of \$500.

